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AUG 20 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Annual Assessment of the Status of) MM Docket No. 97-141
Competition in Markets for the)
Delivery of Video Programming)

REPLY COMMENTS OF HOME BOX OFFICE

Home Box Office ("HBO"), a division of Time Warner Entertainment Company, L.P., by counsel and pursuant to Section 1.415 of the Commission's rules, hereby submits its reply to comments filed in the above-captioned proceeding. In response to the Commission's inquiry, a number of parties filed information regarding the provision of video description service to the visually impaired. Several of these parties sought mandate of an immediate schedule of implementation for such service.¹ Other parties urged the Commission to take a cautious approach by studying the issues in greater detail.² HBO's reply is limited to the issues addressed by these parties.

¹ See, e.g., Comments of National Coalition of Blind and Visually Impaired Persons ("NCBVIP"); Comments of Helen Harris ("Harris"); Comments of Kaleidoscope Television ("Kaleidoscope"); Comments of American Council of the Blind ("ACB").

² Comments of Motion Picture Association of America ("MPAA"); Comments of National Cable Television Association ("NCTA").

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HBO supports those parties who urge the Commission to refrain from precipitous action. While HBO is sympathetic to the efforts of parties promoting video description service, current analog technology cannot support video description unless other important services enjoyed by millions of television viewers are abandoned. With regard to the emerging deployment of digital technology, too many variables remain unknown at this point for the Commission to promulgate responsibly any rules or implementation schedules for video description over digital television services. Thus, HBO recommends further discussion and study both of the need for video description and its potential application in a digital world, as well as the costs and benefits of any type of mandatory government regulation.

I. Current Analog Technology Cannot Support Video Description

Analog television technology requires services such as video description to be carried via the second audio program channel ("SAP") associated with the video signal. As MPAA notes, many analog television distribution systems simply do not have the current capacity to provide video description.³ The vast majority of broadcasters and cable operators that have purchased equipment to transmit the SAP have done so for the purpose of receiving specialized services that would have to be abandoned if

³ MPAA at 3.

the SAP were dedicated to video description. For example, HBO currently offers Spanish language audio over the SAP channels associated with its premium video services. Approximately 384 HBO affiliates serving approximately six million HBO households have installed SAP transmission equipment to provide the Spanish language service. Other programmers likewise use SAP for second language audio services.⁴ While video description would be beneficial to those with visual impairments, there is no justification for Commission-mandated usurpation of existing SAP capacity at the expense of other equally valid uses.

II. Promises Of Digital Technology Still Largely Unknown

Because of the existing uses of the SAP, HBO submits that video description services can be deployed, if at all, only after significant conversion of U.S. television distribution systems to digital technology has occurred. Digital technology has the potential for the transmission of increased amounts of video, audio, and data. Theoretically, the limitations imposed under current analog technology potentially may be alleviated with the widespread use of digital.

⁴ According to the U.S. Census Bureau, more than 17 million people in the United States speak Spanish as their primary language. See U.S. Bureau of the Census, *Statistical Abstract of the United States: 1996* (116th edition) Washington, DC, 1996 at 53. MPAA estimates that more than 30 million Americans speak English as a second language. MPAA at 3.

However, it is far too early in the process of conversion to digital for the imposition of mandates for specific types of service. The conversion of broadcast and cable distribution systems to digital technology is only beginning and the process is likely to take many years. Moreover, the final result of the conversion is far from certain.⁵ Will there be widespread deployment of high definition television, or standard definition television, or a mixture of the two? What demands on the available capacity of the digital system will exist? What standards will be developed by industry for the various uses, be they video description, additional audio or data services? What penetration will digital technology reach in the cable, satellite or wireless distribution universe? What will be the consumer demand for digital services?

Information regarding costs, technical operability and market response to digital television and its potential available services is still virtually non-existent. Given the vast uncertainty regarding the future of digital transmission, and the flexibility that the Commission has provided for digital television operators to respond to an uncertain marketplace, the

⁵ See *Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Fifth Report & Order*, MM Docket No. 87-268, FCC 97-116 (April 21, 1997). The Commission currently anticipates that full conversion of broadcast television will take place by the year 2006. See also, "HDTV Falling Out of Favor," *Broadcasting and Cable*, Vol. 127, No. 34, August 18, 1997 at 4; "Cable Wrestles With HDTV Technical Issues," *Multichannel News*, Vol. 18, No. 25, June 23, 1997 at 42.

time simply has not yet arrived when specific uses of that technology can be mandated.

III. Further Study of Video Description Is Needed

Rather than have the government force premature regulation, HBO submits that parties affected by video description should conduct further study of the issues raised by video description, to better consider its possible implementation at such time as it is technically and economically feasible. In order for the Commission and the industry to better assess the role of video description within the digital environment, more information is required.

At the outset, the market potential for video description must be better understood. NCBVIP estimates the number of visually impaired persons to be anywhere from 10 to 25 million.⁶ Helen Harris puts the figure at 31 million, while Kaleidoscope claims that 49 million disabled people could benefit from its programming containing video descriptions.⁷ On the other hand, the U.S. Census Bureau states that 8.6 million U.S. residents have a "visual impairment."⁸ According to a study

⁶ NCBVIP at 4.

⁷ Harris at 3; Kaleidoscope at 3.

⁸ U.S. Bureau of the Census, Statistical Abstract of the United States: 1996 (116th edition) Washington, DC, 1996 at 143 (citing U.S. National Center for Health Statistics, *Vital and Health Statistics*, series 10, No. 193.).

published in 1992, there are 1.1 million legally blind individuals in the U.S.⁹ The vast range of these various estimates suggests that the concept of "visual impairment" is currently ill-defined. Such vagueness does not serve the purpose of promoting responsible decision making. Given the many competing demands that will be placed on available digital capacity, it is critical that accurate information regarding the size and scope of the various constituencies be available so that technical, economic and public interest priorities can be established.

Moreover, the costs of implementing video description on other than an experimental scale are as yet unknown. For instance, unlike closed captioning, which is essentially a transcription service, video description requires the addition of original narration to a production, thus creating a new, derivative work. This raises serious legal and financial questions regarding copyright. While video description advocates report positive experiences in dealing with copyright holders in a voluntary or experimental setting, conditions could prove radically different under a mandated video description regime. Further, video description requires the use of professional talent for scripting and performance. As of yet, the costs associated with writers and performers (including union, guild

⁹ Chiang, Bassi and Javitt, "Federal Budgetary Costs of Blindness," Millbank Quarterly, Vol. 10, No. 2 at 319-40 (1992).

and residual costs) are unknown. Such costs could prove to be substantial or even prohibitive for some providers. Finally, unlike closed captioning, the technical production of video description is much more complex -- essentially requiring the creation of a new audio mix carefully edited to blend the descriptions with program dialogue, music and special audio effects. These processes are expected to be significantly more costly and time consuming than the closed captioning process.

Even for those costs which can be predicted at this point, funding remains a significant issue. Currently, it appears that the vast majority of funding for video description is provided by the Federal government. As MPAA notes, none of the government sources is secure enough to ensure future funding.¹⁰ Further, the relatively small size of the visually impaired audience would limit the revenues programmers could expect to generate through video description and thus hinder marketplace funding. Therefore, prior to deciding whether to mandate video description, the Commission must have a thorough understanding of the economics involved and the impact such economics would likely have on video service providers.¹¹

¹⁰ MPAA at 6.

¹¹ In order for video description to work, equipment would have to be in place at every point from the original production and transmission sources to the end television unit.

Conclusion

HBO appreciates the voluntary efforts to date of those parties seeking to implement video description service. While such voluntary efforts are yielding positive results, the time is not yet right for the discussion of a mandatory implementation scheme. Further study of the issues is needed, and developments in the deployment of digital technology need to be solidified, before the implementation of video description can legitimately be considered.

Respectfully submitted,

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August 20, 1997

CERTIFICATE OF SERVICE

I, Jette Ward, a secretary with the law firm Reed Smith Shaw & McClay LLP, hereby certify that on this 20th day of August, 1997, I have caused to be delivered the foregoing **"REPLY COMMENTS OF HOME BOX OFFICE"** by first class mail, postage prepaid, to the following persons:

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